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OFFICE OF PETITIONS

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In re Patent No. 7,593,748 : DECISION ON REQUEST
Korhonen et al. : FOR
Issue Date: September 22, 2009: RECONSIDERATION OF
Application No. 10/509,528 : PATENT TERM ADJUSTMENT
Filed: September 24, 2004 : and
Atty Docket No.088245-0110 : NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on October 22, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by six hundred and thirty (630) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by four hundred and seventeen (417) days¹ is **GRANTED to the extent indicated herein.**

¹ The maximum "B" delay period is 427 days, not considering any excluded periods of appellate review. In calculating the "B" delay period, patentees used the date of September 24, 2004, the date of receipt of 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) requirements. The Office used incorrectly the date of September 26, 2004, in calculating the maximum "B" delay period. In an international application, the "B" delay period is based on the failure of the Office to issue a patent within three years after the national stage commenced under 35 U.S.C. 371(b) or (f), not the date of receipt of 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) requirements. See 1.702(b). The priority date of this application is March 26, 2002. The date that is 30 months from the priority date is Sunday, September 26, 2004. As the national stage cannot commence on a weekend or federal holiday, the date the national stage commenced in this application is Monday, September 27, 2004. Thus, "B" delay is 427 days, counting the number of days beginning on September 28, 2007, and ending on November 27 2008, the day before the date the Request for Continued Examination was filed. See 1.703(b).

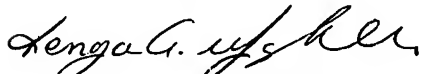
It is noted that patentees failed to account for the filing of the notice of appeal on July 20, 2007. The Office reminds patentees that the period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). In this instance, the period consumed by appellate review is 291 days, beginning on the date on which the notice of appeal to the Board of Patent Appeals and Interferences was filed, July 20, 2007, and ending on the Office action under 35 USC 132 was mailed May 6, 2008. Thus, the B delay is 136 days (427 - 291). Accordingly, the patent term adjustment is 417 days (474 days of A delay + 136 days of B delay - 86 days of overlap - 107 days of applicant delay).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by four hundred and seventeen (**417**) days.

Telephone inquiries specific to this matter should be directed to the undersigned, at (571) 272-3222.


Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,593,748 B2

DATED : Sep. 22, 2009

INVENTOR(S) : Korhonen et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (379) days

Delete the phrase "by 379 days" and insert – by 417 days--